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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SYMANTEC CORPORATION,

Plaintiff and Counterclaim Defendant,

vs.

VEEAM SOFTWARE CORPORATION

Defendant.

AND RELATED COUNTERCLAIMS

Case No. 3:12-cv-00700 SI (consolidated for all
purposed with Civil Action No. 12-01035-SI)

Honorable: Edward M. Chen

**STIPULATION AND ~~PROPOSED~~ ORDER
REGARDING ESI DISCOVERY PLAN**

Plaintiff-Counterclaim Defendant Symantec Corporation ("Symantec") and Defendant
Veeam Software Corporation ("Veeam") hereby stipulate, subject to approval of the Court, that:

1 1. The purpose of this stipulation is to avoid unnecessarily burdensome, duplicative,
2 and expensive discovery in this litigation. The parties recognize that the procedures here do not
3 set forth procedures for forensically defensible document production, because such a production in
4 this case would not be consistent with the purpose of the stipulation.

5 2. The parties agree to conduct a reasonable and thorough search for paper documents
6 and electronically stored information (ESI) responsive to the other side's discovery requests or
7 that are otherwise relevant to any claim or defense asserted in the above captioned case. The
8 parties need not exchange and negotiate search terms with the other side before collecting and
9 producing relevant and responsive information.

10 3. When possible, electronically-stored documents in English that are text-searchable
11 in their native form will be produced as .tiff images or searchable .pdf images with appropriate
12 Bates numbers and confidentiality designations and, in the case of .tiff images, with load files that
13 denote document breaks and document family relationships and extracted or OCR'd text that is
14 searchable (i.e., production in native format is permitted but not be required, although the parties
15 may later agree to produce certain information in Excel or other native format to facilitate use by
16 each side). No party will be obligated to render a document to searchable form for the purpose of
17 producing the document if that document is not searchable in its native format or if the party does
18 not possess the document in its native format. In producing documents written primarily or
19 entirely in languages other than English, the parties agree that the producing party will produce (1)
20 all non-privileged English translations of such documents that were prepared by or on behalf of
21 the producing party before the filing of this litigation and (2) all certified English translations
22 created during this litigation of documents written primarily or entirely in languages other than
23 English that a party intends to rely upon at trial or in motion practice.
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1 4. For documents that originally exist in paper form, such documents will be produced
2 as searchable .tiff images.

3 5. The parties further agree to delay the search and production of electronic mail
4 (“email”) until such time as the receiving party has reviewed the contents of the producing party’s
5 document production and determines that electronic mail and electronic mail documentation is
6 required. To obtain email, parties must propound specific email production requests. Email
7 production requests shall only be propounded for specific issues, rather than general discovery of a
8 product or business. Email production requests shall be phased to occur after the parties have
9 exchanged initial disclosures and basic documentation about the patents, the prior art, the accused
10 instrumentalities, and the relevant finances and damages-related discovery. Email production
11 requests shall identify the custodian and time frame. The parties shall cooperate to identify the
12 proper custodians and proper timeframes. Each requesting party shall limit its email production
13 requests to a total of five custodians per producing party for such requests. The parties may agree
14 to modify this limit without the Court’s leave. The Court may allow contested requests for up to
15 five additional custodians per producing party, upon a showing of good cause by the party seeking
16 to discover emails of additional custodians.

17 6. Each requesting party may select up to ten search terms to apply against the data
18 collected from these five custodians. The parties may agree to modify this limit without the
19 Court’s leave. The Court may allow contested requests for up to five additional search terms upon
20 a showing of good cause by the party requesting additional terms. The parties shall cooperate and
21 meet and confer in good faith to devise narrowly tailored requests. The parties shall exchange
22 search term hit results before the search terms are applied to the custodian data set.

23 7. The receiving party shall not use inadvertently produced ESI that the producing
24 party asserts is attorney-client privileged or work product protected to challenge the privilege or
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1 protection and will promptly return all such inadvertently produced ESI, and all copies, to the
2 producing party..

3 8. Pursuant to Federal Rule of Evidence 502(d), the inadvertent production of a
4 privileged or work product protected ESI is not a waiver in the pending case or in any other
5 federal or state proceeding.
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7 9. The mere production of ESI in a litigation as part of a mass production shall not
8 itself constitute a waiver for any purpose.

9 10. The parties agree to delay the search and production of metadata (as used herein to
10 refer to electronically stored information about the document that does not appear on the face of
11 the original document if emailed or printed), audio, or video information until such time as the
12 receiving party has reviewed the contents of the producing party's document production and
13 determines that metadata, audio, and/or video information is reasonably required. To the extent
14 that the discovery sought is considered unduly burdensome by the producing party (or otherwise
15 objectionable under the applicable rules), the producing party can object on that basis, and the
16 requesting party may seek relief from the Court. The parties further agree, however, that neither
17 party need deviate from the practices it normally exercises with regard to creation and/or
18 maintenance of such "metadata, audio, or video information."
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20 11. Notwithstanding the foregoing, the parties agree to produce available date and
21 author metadata for documents related to the conception and reduction to practice of any asserted
22 patent, to the extent such metadata exists without the need for forensic collection.
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24 12. The parties have agreed to not search and produce materials retained in tape, floppy
25 disk, optical disk, or similar formats used primarily for back-up or disaster recovery purposes.
26 The parties have further agreed to not search and produce archives that were created solely for
27 disaster recovery purposes, are not used in the ordinary course of a party's business, and are stored
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1 on computer servers, external hard drives, notebooks, or personal computer hard drives. In
2 reaching this agreement, each party has represented that it has no reason to believe that any
3 disaster recovery backup is the sole source of any relevant information. The parties need not
4 deviate from their normal business practices with regard to such “tape, floppy disk, optical disk, or
5 similar formats primarily for back-up or disaster recovery purposes.” In particular, recycling of
6 back-up tapes conducted in the ordinary course of a party’s business operations is permitted.
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8 13. The parties also agree that if responsive documents are located on a centralized
9 server or network, the producing party shall not be required to search for additional, identical
10 copies of such responsive documents that may be located on the personal computer, or otherwise
11 in the possession, of individual employees absent a showing of good cause that the production of
12 such additional copies is necessary. The parties will meet and confer to discuss the parameters of
13 the search and production of any such documents. The parties also agree that if responsive
14 documents are located on a centralized server, network, or an individual employee's computer, the
15 producing party shall not be required to search for additional, identical copies of such responsive
16 documents that may be located on any (other) individual employee's computer, or otherwise in the
17 possession, of individual employees absent a showing of good cause that the production of such
18 additional copies is necessary. The parties further agree that neither party need deviate from the
19 practices it normally exercises with regard to such additional, identical copies.
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21 14. Notwithstanding the foregoing, the parties have agreed to collect and produce
22 responsive and relevant documents that the producing party knows or has reason to believe to be
23 located only on the personal computer, in an email account, or otherwise in the possession, of
24 individual employees or that can be collected and produced without undue burden.
25

26 DATED: July 25, 2012

QUINN EMANUEL URQUHART &
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By: /s/ Jennifer A. Kash

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PURSUANT TO STIPULATION, IT IS SO ORDERED.

DATED: July 27, 2012

By: 
Hon. Susan Illston
United States District Judge

SIGNATURE ATTESTATION

Pursuant to General Order No. 45(X)(B), I hereby certify that concurrence in the filing of this document has been obtained from each of the other signatories shown above.

/s/ Kate E. Cassidy